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10 UNITED STATES DISTRICT COURT  
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12 CENTRAL DISTRICT OF CALIFORNIA

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SÉBASTIEN MESLAGE, Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

v.

MATCH GROUP, INC., BERNARD  
KIM, and GARY SWIDLER,

Defendants.

No.

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF THE  
FEDERAL SECURITIES LAWS**

**CLASS ACTION**

**JURY TRIAL DEMANDED**

1 Plaintiff Sébastien Meslage (“Plaintiff”), individually and on behalf of all  
2 other persons similarly situated, by Plaintiff’s undersigned attorneys, for Plaintiff’s  
3 complaint against Defendants (defined below), alleges the following based upon  
4 personal knowledge as to Plaintiff and Plaintiff’s own acts, and information and  
5 belief as to all other matters, based upon, among other things, the investigation  
6 conducted by and through his attorneys, which included, among other things, a  
7 review of the Defendants’ public documents, public filings, wire and press releases  
8 published by and regarding Match Group, Inc. (“Match Group” or the  
9 “Company”), and information readily obtainable on the Internet. Plaintiff believes  
10 that substantial evidentiary support will exist for the allegations set forth herein  
11 after a reasonable opportunity for discovery.

12 **NATURE OF THE ACTION**

13 1. This is a class action on behalf of persons or entities who purchased  
14 or otherwise acquired publicly traded Match Group securities between May 2,  
15 2023 and November 6, 2024, inclusive (the “Class Period”). Plaintiff seeks to  
16 recover compensable damages caused by Defendants’ violations of the federal  
17 securities laws under the Securities Exchange Act of 1934 (the “Exchange Act”).  
18

19 **JURISDICTION AND VENUE**

20 2. The claims asserted herein arise under and pursuant to Sections 10(b)  
21 and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5  
22 promulgated thereunder by the SEC (17 C.F.R. § 240.10b-5).

23 3. This Court has jurisdiction over the subject matter of this action  
24 pursuant to 28 U.S.C. § 1331, and Section 27 of the Exchange Act (15 U.S.C.  
25 §78aa).

26 4. Venue is proper in this judicial district pursuant to 28 U.S.C. §  
27 1391(b) and Section 27 of the Exchange Act (15 U.S.C. § 78aa(c)) as the alleged  
28

misstatements entered and the subsequent damages took place in this judicial district.

5. In connection with the acts, conduct and other wrongs alleged in this complaint, Defendants (defined below), directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

## PARTIES

9       6. Plaintiff, as set forth in the accompanying certification, incorporated  
10 by reference herein, purchased Match Group securities during the Class Period and  
11 was economically damaged thereby.

12 || 7. Match Group describes itself as follows:

Match Group, Inc., through its portfolio companies, is a leading provider of digital technologies designed to help people make meaningful connections. Our global portfolio of brands includes Tinder®, Hinge®, Match®, Meetic®, OkCupid®, Pairs™, Plenty Of Fish®, Azar®, BLK®, and more, each built to increase our users' likelihood of connecting with others. Through our trusted brands, we provide tailored services to meet the varying preferences of our users.

18        8. Pertinent to this action is the Company's Tinder app. After instituting  
19 policies which led to the removal of at least two million Tinder users, which in part  
20 contributed to the number of monthly active users ("MAU" or "MAUs") declining,  
21 the Company assured the market that it was on a path to positive MAU growth on  
22 the Tinder app when in fact it was not.

23       9.     The Company is incorporated in Delaware and its principal executive  
24 offices are in Dallas, Texas. Tinder's headquarters is in Los Angeles, California.

25        10. The Company's stock trades on the NASDAQ under the ticker symbol  
26        "MTCH."

27        11. Defendant Bernard Kim (“Kim”) was the Company’s Chief Executive  
28 Officer (“CEO”) throughout the Class Period.

1       12. Defendant Gary Swidler (“Swidler”) was the Company’s Chief  
2 Financial Officer (“CFO”) and President throughout the Class Period.

3       13. Defendants Kim and Swidler are collectively referred to herein as the  
4 “Individual Defendants.”

5       14. Each of the Individual Defendants:

6           (a) directly participated in the management of the Company;

7           (b) was directly involved in the day-to-day operations of the Company at  
8 the highest levels;

9           (c) was privy to confidential proprietary information concerning the  
10 Company and its business and operations;

11           (d) was directly or indirectly involved in drafting, producing, reviewing  
12 and/or disseminating the false and misleading statements and information  
13 alleged herein;

14           (e) was directly or indirectly involved in the oversight or implementation  
15 of the Company’s internal controls;

16           (f) was aware of or recklessly disregarded the fact that the false and  
17 misleading statements were being issued concerning the Company; and/or

18           (g) approved or ratified these statements in violation of the federal  
19 securities laws.

20       15. The Company is liable for the acts of the Individual Defendants and  
21 its employees under the doctrine of *respondeat superior* and common law  
22 principles of agency because all of the wrongful acts complained of herein were  
23 carried out within the scope of their employment.

24       16. The scienter of the Individual Defendants and other employees and  
25 agents of the Company is similarly imputed to the Company under *respondeat*  
26 *superior* and agency principles.

17. Defendant Match Group and the Individual Defendants are collectively referred to herein as “Defendants.”

## **SUBSTANTIVE ALLEGATIONS**

## **Materially False and Misleading Statements Issued During the Class Period**

18. On May 2, 2023, the Company published its Q1 2023 shareholder letter. The letter stated, in pertinent part, the following:

While Tinder is an iconic brand used by many, our data shows that approximately 40% of eligible singles age 18 to 34 in North America and Europe are still not using Tinder, and an additional approximately 35% have used Tinder previously, but not in the last year (“lapsed users”). This provides ample opportunity for Tinder to bring both singles who have never tried the app and lapsed users into the fold. *Tinder has a strong history of reactivating lapsed users, and the large pool of lapsed users provides significant opportunity to increase reactivations. The way for Tinder to attract new and lapsed users is to deliver exciting features and a product experience that resonates. We’re confident that as Tinder does so, it can both return to stronger new user growth and reactivate the large population of lapsed users, which will ultimately drive revenue growth.*

(Emphasis added.)

19. The statement in ¶ 18 was materially false and misleading at the time it was made because it understated the difficulty of driving meaningful user growth in the future, considering the Company's pool of lapsed users to reactivate.

20. On February 23, 2024, the Company filed with the SEC its annual report on Form 10-K for the year ending December 31, 2023 (the “2023 Annual Report”). Attached to the 2023 Annual Report were certifications pursuant to the Sarbanes-Oxley Act of 2002 (“SOX”) signed by Defendants Kim and Swidler attesting to the accuracy of financial reporting, the disclosure of any material

1 changes to the Company's internal control over financial reporting, and the  
2 disclosure of all fraud.

3 21. The 2023 Annual Report included the following risk disclosure:

4 ***If we fail to retain existing users or add new users, our revenue, financial  
5 results, and business may be significantly harmed.***

6 ***Our financial performance has been and will continue to be significantly  
7 determined by our success in adding and retaining users of our services.*** In the past we have experienced, and expect to continue to experience, 8 fluctuations in the size of our user base in one or more markets from time to time, 9 particularly in markets where we have achieved higher penetration 10 rates. The size of our user base is also impacted by a number of other factors, 11 including competitive products and services and global and regional 12 business, macroeconomic, and geopolitical conditions. For example, wars in 13 the Middle East and Ukraine have led to reduced supply as well as the decision to suspend our services in Russia.

14 ***Further, if people do not perceive our services to be useful, we may not be  
15 able to attract or retain users.*** In recent years, some users, particularly 16 younger generations, have shown a decreased appetite for our services and 17 those of our competitors due potentially to a number of factors. ***With each  
18 new generation of users, expectations of our services change and user  
behaviors and priorities shift.*** As a result, we may need to further leverage 19 our existing capabilities or advances in technologies like artificial 20 intelligence ("AI"), or adopt new technologies, to improve our existing 21 services or introduce new services in order to better satisfy existing users 22 and to expand our penetration of what continues to be a large available new 23 user market. However, there can be no assurances that further 24 implementation of technologies like AI will enhance our services or be 25 beneficial to our business and the introduction of new features or services to 26 our existing services may have unintended consequences on our ecosystem, 27 which could lead to fluctuations in the size of our user base. Additionally, in 28 2023 we began consolidating some of our legacy brands' platforms in order to decrease operating costs, which may result in changes to the user experience for some of our brands that some existing users may perceive negatively.

If we are unable to maintain or increase the size of our user base, our revenue and other financial results may be adversely affected. Further, as the size of our user base fluctuates in one or more markets from time to time, we may become increasingly dependent on our ability to maintain or increase levels of monetization in order to grow revenue. Any significant decrease in user retention or growth could render our services less attractive to users, which is likely to have a material and adverse impact on our business, financial condition, and results of operations.

(Emphasis added).

22. The statement in ¶ 21 was materially false and misleading because it understated the difficulty of retaining existing users or adding new MAUs on the Company's Tinder app, and omitted risks relating to gaining new users after the Company had instituted policies which led to the removal of at least two million Tinder users.

23. On May 8, 2024, the Company filed with the SEC its report on Form 10-Q for the period ending March 31, 2024 (the "1Q24 Report"). Attached to the 1Q24 Report were certifications pursuant to SOX signed by Defendants Kim and Swidler attesting to the accuracy of financial reporting, the disclosure of any material changes to the Company's internal control over financial reporting, and the disclosure of all fraud.

24. The 1Q24 Report incorporated by reference the risk disclosures in the 2023 Annual Report, one of which was materially false and misleading when made for the reasons discussed in ¶ 22.

25. On May 8, 2024, Match Group had its Q1 2024 earnings call. In this call, Defendant Kim made the following statement:

Tinder's international scale and reach has never been matched by any other dating app. And it's critical that we keep the ecosystem vibrant. ***For example, Tinder took decisive action by changing its community guidelines and moderation practices mid-last year, which better enabled the removal of users who are not on the app for its intended purposes. While the improvements to the ecosystem and benefits to the brand are***

1 *undeniable, these actions did contribute to some of Tinder's MAU declines*  
2 *over the past nine months.*

3 We believe that actions like these are in the best interest of Tinder's long-  
4 term success. *So we are willing to accept fewer MAU in the short-term* to  
5 create a safer ecosystem and better outcomes for our daters. Diving a little  
6 deeper into Tinder, we have heard loud and clear that some users, especially  
7 the Gen Z cohort, are looking for more from their dating apps. We have been  
8 in this business a long time, and we have consistently adapted our offerings  
9 to best serve the needs of different generations and we understand and  
10 recognize that expectations of apps are changing.

11 *Tinder is working tirelessly to execute against their strategy, and I'm*  
12 *incredibly confident in the team's ability to satisfy these evolving*  
13 *expectations that users have. By the end of the year, we expect to have a*  
14 *significantly improved product.* Similarly, pressures on discretionary  
15 consumer spending, especially among Tinder's younger user base, have  
16 negatively impacted Tinder's a la carte revenue. The team is doubling down  
17 on its efforts to improve the efficacy of its current ALC features and  
18 introduce new offerings at affordable price points. We expect to see  
19 improvements in ALC trends by the back half of the year. We know we have  
work to do to satisfy every new generation of daters. The Tinder team is  
working to improve the dating journey at every point of the experience.  
20 *Through innovation, especially with AI, we believe we can improve the*  
21 *quality of profiles, matching outcomes, safety features, and the post-match*  
22 *experience to make the entire Tinder platform more modern and deliver*  
23 *on their brand promise.*

24 I've asked our Chief Technology Officer and his central innovation team to  
25 work even more closely with Tinder's product team to expedite all these  
26 efforts which are underway. *And given Tinder's vast scale and knowledge*  
27 *about relationships and dating, there is no dating app better positioned to*  
28 *take advantage of these advances in technology.* Tinder has become an  
industry defining highly profitable business over the past decade. We have  
been innovating to solve some of the user pain points. As a result, we will  
have a healthier, more satisfying, and ultimately more valuable experience  
for daters to enjoy.

29 *And I am confident that Tinder's momentum will come back. We believe*  
30 *we have real market opportunity and the right teams and strategies in*

1 *place to get to that next level of growth.* And we are determined to deliver  
2 that for all of our stakeholders. We continue to see significant growth  
3 runway at Hinge and our emerging brands portfolio. *We're executing on our*  
4 *turnaround plan for Tinder and our central innovation teams are bringing*  
5 *renewed vigor to product innovation.* We are excited to continue this work  
6 as giving people new, exciting ways to connect is what motivates us every  
7 day. And with that, let me turn it over to Gary.

8 (Emphasis added).

9 26. The statement in ¶ 25 was materially false and misleading because it  
10 understated the extent of Match Group's challenge with gaining monthly active  
11 users on the Tinder app, after it instituted policies which led to the removal of at  
12 least two million Tinder users.

13 27. On July 31, 2024, the Company held its Q2 2024 earnings call.

14 28. On the Q2 2024 earnings call, Defendant Swidler made the following  
15 statement:

16 Focusing on user trends, we saw sequential stability in Tinder's MAU, which  
17 were down 9% year-over-year in Q2, as was the case in Q1. MAU at Tinder  
18 have now been relatively stable since March. *A large decline in MAU began*  
19 *in July of last year, driven in large part by changes we made to Tinder's*  
20 *trust and safety policies to remove people who are not truly on the app to*  
21 *connect that has now begun to stabilize.*

22 With much of this impact now behind us and given Tinder's various ongoing  
23 product and marketing initiatives, *we're confident Tinder's year-over-year*  
24 *MAU declines should continue to moderate as this year passes.*

25 (Emphasis added).

26 29. The statement in ¶ 28 was materially false and misleading at the time  
27 it was made because Tinder's MAU issues had not yet begun to materially stabilize.

28 30. On the Q2 2024 earnings call, Defendant Kim made the following  
29 statement:

30 Over the last several quarters, Tinder has been working hard to improve the  
31 user experience, and we're now starting to see initial signs of progress. User  
32 and payer trends are stabilizing, and we expect them to continue to improve

1 from here. ***We expect strong sequential payer growth in Q3 and better year-***  
2 ***over-year MAU trends in the second half of the year.***

3 As the largest dating app in the world, it's Tinder's job to deliver for its users,  
4 which in turn helps attract new users. ***Tinder is building on its fun legacy***  
5 ***and its iconic swipe experience by continuing to increase authenticity and***  
6 ***realness and by setting the industry standard for trust and safety.*** We  
7 believe this will address some of the concerns that users have been vocal  
8 about more recently.

9 (Emphasis added).

10 31. The statement in ¶ 30 was materially false and misleading at the time  
11 it was made because Tinder's MAU issues had not begun to stabilize.

12 32. The Q2 2024 earnings call included the following exchange between  
13 Defendant Kim and Nathan Feather, a Morgan Stanley analyst:

14 **Feather:** Hey, everyone. ***Congrats on the stabilization and Tinder user***  
15 ***growth in the quarter.*** Is there anything outsized that led to that stabilization  
16 or more so stacking of a variety of individual improvements? And can you  
help us contextualize how much of that is due to new user trends versus  
retention? Thank you.

17 **Kim:** Thanks, Nathan, for that question. I really like how you framed it  
18 around stacking Tinder product improvements. Our work is really a  
19 combination of product initiatives building on each other over time. And this  
20 is reinforced with really strong marketing that is helping drive stabilization  
21 and start contributing to improvements on the back half of this year. The  
22 trust and safety moves that we made last year are one of -- is a great example  
23 of stacking initiatives, which we know were the right decisions. And the  
24 good news is we've worked through a lot of those -- a lot of that noise and  
has led to better user outcomes and say that the user base has stabilized,  
retention is improving and growing and we're making strides in top of funnel  
again. It's a really exciting time period for Tinder.

25 (Emphasis added).

1       33. The statement from Defendant Kim in ¶ 32 was materially false and  
2 misleading at the time it was made because Tinder's MAU issues had not begun to  
3 stabilize.

4       34. On August 1, 2024, the Company filed with the SEC its report on  
5 Form 10-Q for the period ending June 30, 2024 (the “2Q24 Report”). Attached to  
6 the 2Q24 Report were certifications pursuant to SOX signed by Defendants Kim  
7 and Swidler attesting to the accuracy of financial reporting, the disclosure of any  
8 material changes to the Company’s internal control over financial reporting, and  
9 the disclosure of all fraud.

10        35. The 2Q24 Report incorporated by reference the risk disclosures in the  
11 2023 Annual Report, one of which was materially false and misleading when made  
12 for the reasons discussed in ¶ 22.

13       36. The statements contained in ¶¶ 18, 21, 24, 25, 28, 30 and 32 were  
14 materially false and/or misleading because they misrepresented and failed to  
15 disclose the following adverse facts pertaining to the Company’s business,  
16 operations and prospects, which were known to Defendants or recklessly  
17 disregarded by them. Specifically, Defendants made false and/or misleading  
18 statements and/or failed to disclose that: (1) Match Group materially understated  
19 the challenges affecting Tinder and, as a result, understated the risk that Tinder’s  
20 monthly active user count would not recover by the time the Company reported its  
21 financial results for the third quarter of 2024; and (2) as a result, defendants’  
22 statements about Match Group’s business, operations, and prospects were  
23 materially false and misleading and/or lacked a reasonable basis at all relevant  
24 times.

## **THE TRUTH BEGINS TO EMERGE**

26        37. On November 6, 2024, Match Group published its Q3 2024  
27 shareholder letter. The shareholder letter included the following disclosure:

1 Tinder MAU was down 9% Y/Y in Q3, which was the same rate of decline  
2 as in Q2, falling short of our expectations for continued improvement in Y/Y  
3 trends. From mid-September through October, we saw more pressure on  
4 new users (registrations and reactivations) than we expected, which has led  
to pressure on MAU.

5 Tinder's primary focus remains driving its product transformation efforts  
6 forward to improve ecosystem health and user outcomes, which we believe  
7 are necessary for durable improvements in user, Payer, and revenue trends.

8 38. On November 7, 2024, Investopedia published an article entitled  
9 "Match Group Stock Slips as Fourth Quarter Outlook Disappoints." This article  
stated, in pertinent part, the following:

10 Shares of online dating giant [Match] tumbled Thursday morning despite a  
11 third-quarter earnings beat released after the bell Wednesday.

12 \* \* \*

13 Revenue and downloads of Hinge continued to grow, ***but Match said Tinder  
14 Direct revenue came in below its own expectations, as the app's monthly  
15 active users (MAUs) declined 9% from the same time last year and its  
16 revenue per payer (RPP) grew less than expected. Some new features  
17 tested with Tinder users in the quarter negatively impacted subscription  
18 revenue, which the company said will likely also have an impact on fourth  
quarter revenue.***

19 (Emphasis added).

20 39. On the accompanying Q3 2024 earnings call on November 7, 2024,  
21 Bernard Kim made the following statement about Tinder:  
22

23 As I mentioned during our last call, shareholders rightfully expect both short  
24 and long-term results. In the short-term, Tinder's direct revenue was slightly  
25 below our expectations driven by the under delivery of certain optimizations.  
However, Tinder added 311,000 payers sequentially and declined by only  
4% year-over-year. This was well above our outlook provided in late July.

26 ***While we're pleased with the results on payers, we saw less progress on  
27 Tinder MAU than we expected.*** Tinder remains focused on the long-term  
28

1 testing several important new features aimed at cleaning up its ecosystem  
2 and improving user outcomes. This includes testing mandated face photos in  
3 several markets.

4 \* \* \*

5 We're pleased with the progress we've seen recently at Tinder on product  
6 execution, but are far from done. The team is working tirelessly pushing  
7 forward with initiatives to drive Tinder's transformation forward. *At the*  
8 *same time, we're clear eyed that Tinder's progress will not always be linear*  
9 *because we know that transformation, such as these, take time.*

10 (Emphasis added).

11 40. On the same earnings call, Defendant Swidler stated the following:

12 Tinder MAU were down 9% in the quarter consistent with Q2 trends. *We*  
13 *had expected to see improvement in year-over-year MAU trends in the*  
14 *quarter. However, in mid-September, we began to see weaker new user*  
15 *trends, which includes new registrations and reactivations of lapsed users*  
16 *than is typical at this time of year*, a trend that has stabilized in October.

17 The pressure on new users was largely confined to iOS. We are working  
18 collaboratively with Apple to investigate whether it's related to the  
19 introduction of iOS 18 in mid-September, certain trust and safety  
20 enhancements we made or another cause. *This in turn has caused pressure*  
21 *on Tinder MAU*. We are working on a number of initiatives to improve this  
22 trend.

23 (Emphasis added).

24 41. The Q3 2024 earnings call included the following exchange,  
25 illustrating the number of challenges continuing to affect Tinder:

26 **Analyst:** Great. So I guess, Gary, starting with the Tinder top of funnel  
27 trends, could you just elaborate a little bit more on what's going on? You  
28 mentioned iOS and a few other things around top of funnel and the weaker  
MAU at the end of 3Q and then what's happening right now in 4Q? And as  
we turn ahead to '25, other than cranking on marketing, what other trends  
might help drive top of funnel at Tinder? And I guess it's related to this, did

1 you feel like Tinder's operating margin at 52% is at the right level or how do  
2 we think about that long-term? Thank you.

3 **Bernard Kim:** Thanks, Ross. This is BK. I'm going to handle the first part  
4 of that question and Gary can jump in on the margin side. So we did see a  
5 step back in Tinder's MAU growth starting in mid-September. And as Gary  
6 mentioned in his comments, we're investigating several possible causes.  
7 This includes the introduction of iOS 18 and some recent trust and safety  
8 enhancements that may have added to friction for daters. While I believe this  
9 step back isn't what we wanted, we don't see this as a long-term structural  
10 shift. Our team's top priority remains driving product innovation and that's  
11 where Tinder's focus is. We know we need to clean up the ecosystem and  
12 create better experiences, especially for younger users and women and we're  
13 working on it, but meaningful changes do take time. Now you mentioned  
14 marketing and it's definitely key to reinforce Tinder's brand and promoting  
new products. But marketing alone will not drive top of funnel growth.  
That's why our focus is on product-led strategies to build sustainable  
engagement. We're excited for Investor Day, so we can lay out our product  
roadmap and discuss our plans to get Tinder back on track. We're confident  
in these plans.

15 42. On this news, the price of Match stock fell by \$6.77 per share, or  
16 17.8%, to close at \$31.11 per share on November 7, 2024.

17 43. As a result of Defendants' wrongful acts and omissions, and the  
18 precipitous decline in the market value of the Company's common shares, Plaintiff  
19 and other Class members have suffered significant losses and damages.

20 **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

21 44. Plaintiff brings this action as a class action pursuant to Federal Rule  
22 of Civil Procedure 23(a) and (b)(3) on behalf of a class consisting of all persons  
23 other than defendants who acquired the Company's securities publicly traded on  
24 NASDAQ during the Class Period, and who were damaged thereby (the "Class").  
25 Excluded from the Class are Defendants, the officers and directors of the Company,  
26 members of the Individual Defendants' immediate families and their legal  
27  
28

1 representatives, heirs, successors or assigns and any entity in which Defendants  
2 have or had a controlling interest.

3       45. The members of the Class are so numerous that joinder of all members  
4 is impracticable. Throughout the Class Period, the Company's securities were  
5 actively traded on NASDAQ. While the exact number of Class members is  
6 unknown to Plaintiff at this time and can be ascertained only through appropriate  
7 discovery, Plaintiff believes that there are hundreds, if not thousands of members  
8 in the proposed Class.

9       46. Plaintiff's claims are typical of the claims of the members of the Class  
10 as all members of the Class are similarly affected by Defendants' wrongful conduct  
11 in violation of federal law that is complained of herein.

12       47. Plaintiff will fairly and adequately protect the interests of the  
13 members of the Class and has retained counsel competent and experienced in class  
14 and securities litigation. Plaintiff has no interests antagonistic to or in conflict with  
15 those of the Class.

16       48. Common questions of law and fact exist as to all members of the Class  
17 and predominate over any questions solely affecting individual members of the  
18 Class. Among the questions of law and fact common to the Class are:

- 19           • whether the Exchange Act was violated by Defendants' acts as alleged  
20 herein;
- 21           • whether statements made by Defendants to the investing public during  
22 the Class Period misrepresented material facts about the business and  
23 financial condition of the Company;
- 24           • whether Defendants' public statements to the investing public during  
25 the Class Period omitted material facts necessary to make the statements  
26 made, in light of the circumstances under which they were made, not  
27 misleading;

- whether the Defendants caused the Company to issue false and misleading filings during the Class Period;
- whether Defendants acted knowingly or recklessly in issuing false filings;
- whether the prices of the Company securities during the Class Period were artificially inflated because of the Defendants' conduct complained of herein; and
- whether the members of the Class have sustained damages and, if so, what is the proper measure of damages.

10        49. A class action is superior to all other available methods for the fair  
11 and efficient adjudication of this controversy since joinder of all members is  
12 impracticable. Furthermore, as the damages suffered by individual Class members  
13 may be relatively small, the expense and burden of individual litigation make it  
14 impossible for members of the Class to individually redress the wrongs done to  
15 them. There will be no difficulty in the management of this action as a class action.

16       50. Plaintiff will rely, in part, upon the presumption of reliance  
17 established by the fraud-on-the-market doctrine in that:

- the Company's shares met the requirements for listing, and were listed and actively traded on NASDAQ, an efficient market;
- as a public issuer, the Company filed periodic public reports;
- the Company regularly communicated with public investors via established market communication mechanisms, including through the regular dissemination of press releases via major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services;
- the Company's securities were liquid and traded with moderate to heavy volume during the Class Period; and

- the Company was followed by a number of securities analysts employed by major brokerage firms who wrote reports that were widely distributed and publicly available.

51. Based on the foregoing, the market for the Company's securities promptly digested current information regarding the Company from all publicly available sources and reflected such information in the prices of the shares, and Plaintiff and the members of the Class are entitled to a presumption of reliance upon the integrity of the market.

52. Alternatively, Plaintiff and the members of the Class are entitled to the presumption of reliance established by the Supreme Court in *Affiliated Ute Citizens of the State of Utah v. United States*, 406 U.S. 128 (1972), as Defendants omitted material information in their Class Period statements in violation of a duty to disclose such information as detailed above.

## COUNT I

## **For Violations of Section 10(b) And Rule 10b-5 Promulgated Thereunder**

## Against All Defendants

53. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

54. This Count is asserted against Defendants is based upon Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5 promulgated thereunder by the SEC.

55. During the Class Period, Defendants, individually and in concert, directly or indirectly, disseminated or approved the false statements specified above, which they knew or deliberately disregarded were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

1       56. Defendants violated §10(b) of the 1934 Act and Rule 10b-5 in that  
2 they:

3           • employed devices, schemes and artifices to defraud;  
4           • made untrue statements of material facts or omitted to state material  
5           facts necessary in order to make the statements made, in light of the  
6           circumstances under which they were made, not misleading; or  
7           • engaged in acts, practices and a course of business that operated as a  
8           fraud or deceit upon plaintiff and others similarly situated in connection with  
9           their purchases of the Company's securities during the Class Period.

10       57. Defendants acted with scienter in that they knew that the public  
11 documents and statements issued or disseminated in the name of the Company  
12 were materially false and misleading; knew that such statements or documents  
13 would be issued or disseminated to the investing public; and knowingly and  
14 substantially participated, or acquiesced in the issuance or dissemination of such  
15 statements or documents as primary violations of the securities laws. These  
16 defendants by virtue of their receipt of information reflecting the true facts of the  
17 Company, their control over, and/or receipt and/or modification of the Company's  
18 allegedly materially misleading statements, and/or their associations with the  
19 Company which made them privy to confidential proprietary information  
20 concerning the Company, participated in the fraudulent scheme alleged herein.

21       58. Individual Defendants, who are the senior officers of the Company,  
22 had actual knowledge of the material omissions and/or the falsity of the material  
23 statements set forth above, and intended to deceive Plaintiff and the other members  
24 of the Class, or, in the alternative, acted with reckless disregard for the truth when  
25 they failed to ascertain and disclose the true facts in the statements made by them  
26 or any other of the Company's personnel to members of the investing public,  
27 including Plaintiff and the Class.

28

1       59. As a result of the foregoing, the market price of the Company's  
2 securities was artificially inflated during the Class Period. In ignorance of the  
3 falsity of Defendants' statements, Plaintiff and the other members of the Class  
4 relied on the statements described above and/or the integrity of the market price of  
5 the Company's securities during the Class Period in purchasing the Company's  
6 securities at prices that were artificially inflated as a result of Defendants' false and  
7 misleading statements.

8        60. Had Plaintiff and the other members of the Class been aware that the  
9 market price of the Company's securities had been artificially and falsely inflated  
10 by Defendants' misleading statements and by the material adverse information  
11 which Defendants did not disclose, they would not have purchased the Company's  
12 securities at the artificially inflated prices that they did, or at all.

13       61. As a result of the wrongful conduct alleged herein, Plaintiff and other  
14 members of the Class have suffered damages in an amount to be established at trial.

15       62. By reason of the foregoing, Defendants have violated Section 10(b)  
16 of the 1934 Act and Rule 10b-5 promulgated thereunder and are liable to the  
17 plaintiff and the other members of the Class for substantial damages which they  
18 suffered in connection with their purchase of the Company's securities during the  
19 Class Period.

## **COUNT II**

## **Violations of Section 20(a) of the Exchange Act**

## **Against the Individual Defendants**

23       63. Plaintiff repeats and realleges each and every allegation contained in  
24 the foregoing paragraphs as if fully set forth herein.

25        64. During the Class Period, the Individual Defendants participated in the  
26 operation and management of the Company, and conducted and participated,  
27 directly and indirectly, in the conduct of the Company's business affairs. Because

1 of their senior positions, they knew the adverse non-public information about the  
2 Company's business practices.

3 65. As officers of a publicly owned company, the Individual Defendants  
4 had a duty to disseminate accurate and truthful information with respect to the  
5 Company's financial condition and results of operations, and to correct promptly  
6 any public statements issued by the Company which had become materially false  
7 or misleading.

8 66. Because of their positions of control and authority as senior officers,  
9 the Individual Defendants were able to, and did, control the contents of the various  
10 reports, press releases and public filings which the Company disseminated in the  
11 marketplace during the Class Period concerning the Company's results of  
12 operations. Throughout the Class Period, the Individual Defendants exercised their  
13 power and authority to cause the Company to engage in the wrongful acts  
14 complained of herein. The Individual Defendants therefore, were "controlling  
15 persons" of the Company within the meaning of Section 20(a) of the Exchange  
16 Act. In this capacity, they participated in the unlawful conduct alleged which  
17 artificially inflated the market price of the Company's securities.

18 67. By reason of the above conduct, the Individual Defendants are liable  
19 pursuant to Section 20(a) of the Exchange Act for the violations committed by the  
20 Company.

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for  
23 judgment and relief as follows:

24 (a) declaring this action to be a proper class action, designating Plaintiff  
25 as Lead Plaintiff and certifying Plaintiff as a class representative under Rule 23 of  
26 the Federal Rules of Civil Procedure and designating Plaintiff's counsel as Lead  
27 Counsel;

28

(b) awarding damages in favor of Plaintiff and the other Class members against all Defendants, jointly and severally, together with interest thereon;

(c) awarding Plaintiff and the Class reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) awarding Plaintiff and other members of the Class such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: 11/25/2024

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